

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

CRAIG BUCK, KENNETH MICCICHE,  
VALERIE L. PAWSON, CAROLINE  
MARSHALL-SMITH, WANDA MILLS; JEFF  
GOLUMBUK, ANESIA KALAITZIDIS,  
ATHANASE KARAGIORGOS; AND  
JENNIFER TSOUVRAKAS, on behalf of  
themselves and others,

*Plaintiffs,*

v.

ALASKA AIRLINES, AMERICAN  
AIRLINES, CONTINENTAL AIRLINES,  
DELTA AIR LINES, INC., NORTHWEST  
AIRLINES, SOUTHWEST AIRLINES CO.,  
d/b/a SOUTHWEST AIRLINES, CHINA  
EASTERN AIRLINES CORP. LTD, CHINA  
SOUTHERN AIRLINES CO. LTD., AER  
LINGUS LIMITED, ALITALIA-LINEE  
AEREE ITALINE S.P.A., D/B/A ALITALIA  
AIRLINES, BRITISH AIRWAYS, PLC, D/B/A  
BRITISH AIRWAYS, DEUTSCHE  
LUFTHANSA, A.G., D/B/A LUFTHANSA  
AIRLINES, OLYMPIC AIRWAYS-  
SERVICES, SA, D/B/A OLYMPIC  
AIRWAYS, AIR TRANSPORT  
ASSOCIATION OF AMERICA, INC.,  
AIRLINES REPORTING CORP., AND THE  
FEDERAL AVIATION ADMINISTRATION

*Defendants.*

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: ANSWER OF CHINA  
: SOUTHERN AIRLINES CO.  
: LTD. TO THE AMENDED  
: COMPLAINT

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Defendant China Southern Airlines Company Limited (CHINA SOUTHERN), by its attorneys Campbell, Campbell Edwards & Conroy PC and Condon & Forsyth LLP, answers plaintiffs' Amended Complaint and Request for Class Certification ("Complaint") as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Amended Complaint to the extent they are directed at parties other than CHINA SOUTHERN. CHINA SOUTHERN specifically denies the allegations in paragraph 1 of the Amended Complaint to the extent they are directed toward CHINA SOUTHERN.

2. Denies the allegations in paragraphs 2, 3 and 4 to the extent they are directed towards CHINA SOUTHERN.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 to the extent that any response is required to plaintiff's "definitions."

4. Admits paragraphs 6-8 as they pertain to fees which apply to CHINA SOUTHERN and are collected by CHINA SOUTHERN, except denies that all of the alleged fees are held in Trust, as alleged in paragraph 7.

5. Denies the allegations in paragraph 9 and leaves all questions of law to the Court.

6. Denies the allegations in paragraph 10.

7. Denies the allegations in paragraph 11 and leaves all questions of law to the Court.

8. Denies the allegations in paragraph 12 and leaves all questions of law to the Court.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 13-32.

10. Admits the allegations in paragraph 33.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 34-36.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 37-53.

13. Admits the allegations in paragraph 54.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55.

15. Denies the allegations in paragraphs 56.

16. Leaves all questions of law to the Court in regard to paragraph 57.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59-61.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 62, except denies the allegation in paragraph 62 as they pertain to CHINA SOUTHERN.

20. Denies the allegation in paragraph 63.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 64-76.

22. States that paragraph 77 is not an averment requiring a response but rather a request for relief.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 78-104 to the extent they are directed at parties other than CHINA SOUTHERN. CHINA SOUTHERN specifically denies the allegations in paragraphs 78-104 to the extent they are directed toward CHINA SOUTHERN and leaves all questions of law for the Court.

**AS TO CLASS ACTION STATUS**

24. CHINA SOUTHERN denies the allegations contained in the Complaint that this matter can be certified as a class action jointly against all airline defendants or individually against any airline.

**AS AND FOR A FIRST  
AFFIRMATIVE DEFENSE**

25. The Complaint fails to state a claim against CHINA SOUTHERN upon which relief can be granted.

**AS AND FOR A SECOND  
AFFIRMATIVE DEFENSE**

26. The Class Representative fails to state a claim against CHINA SOUTHERN upon which relief can be granted.

**AS AND FOR A THIRD  
AFFIRMATIVE DEFENSE**

27. CHINA SOUTHERN is a "foreign state" as that term is defined in 28 U.S.C. § 1603 and, therefore, is entitled to all the rights, privileges, protections and defenses afforded by the Foreign Sovereign Immunities Act of 1976, Pub. L. 94-853, 90 Stat. 2891 *codified at* 28 U.S.C. §§ 1330, 1332, 1391 (f), 1441 (d) and 1602-1611.

**AS AND FOR A FOURTH  
AFFIRMATIVE DEFENSE**

28. The Court lacks personal jurisdiction over the person of CHINA SOUTHERN.

**AS AND FOR A FIFTH  
AFFIRMATIVE DEFENSE**

29. The Complaint should be dismissed for improper service of process.

**AS AND FOR A SIXTH  
AFFIRMATIVE DEFENSE**

30. Plaintiffs' state law claims constitute a suit for recovery of a United States federal tax and are barred by 26 U.S.C. § 7422.

**AS AND FOR A SEVENTH  
AFFIRMATIVE DEFENSE**

31. Plaintiffs' claims against CHINA SOUTHERN are preempted by federal law, including the Federal Aviation Act of 1958 as amended (P.L. 5-726, 72 Stat. 731, formerly codified as 49 U.S.C. §1301 *et seq.* now recodified and incorporated into 49 U.S.C. § 40101 *et seq.*), and 49 U.S.C. § 41713.

**AS AND FOR AN EIGHTH  
AFFIRMATIVE DEFENSE**

32. Plaintiffs' are not entitled to the claimed refund as they have failed to comply with the relevant requirements or conditions precedent to obtain the claimed refund.

**AS AND FOR A NINTH  
AFFIRMATIVE DEFENSE**

33. Pursuant to its conditions of carriage and contract of transportation, CHINA SOUTHERN is not liable to plaintiffs.

**AS AND FOR A TENTH  
AFFIRMATIVE DEFENSE**

34. CHINA SOUTHERN performed all of the terms and conditions of the contract between the parties, if any, which were to be performed by CHINA SOUTHERN.

**AS AND FOR AN ELEVENTH  
AFFIRMATIVE DEFENSE**

35. Plaintiffs' claims are barred by the relevant statute of limitations set forth by federal and Massachusetts law.

**AS AND FOR AN TWELFTH  
AFFIRMATIVE DEFENSE**

36. No fiduciary relationship exists between CHINA SOUTHERN and plaintiffs.

**AS AND FOR AN THIRTEEN  
AFFIRMATIVE DEFENSE**

37. Plaintiffs' remedy, if any, for the claimed refunds of taxes/fees/charges is not properly against CHINA SOUTHERN but rather is against the governmental or non-governmental entity to whom the taxes/fees/charges were remitted.

**AS AND FOR AN FOURTEENTH  
AFFIRMATIVE DEFENSE**

38. Plaintiffs' class action suit is not permitted under the Federal Rules of Civil Procedure.

WHEREFORE, defendant CHINA SOUTHERN demands judgment dismissing the Complaint in its entirety, together with costs and disbursements.

Dated: June 15, 2005

By: /s/ Kathleen M. Guilfoyle  
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CHINA SOUTHERN AIRLINES COMPANY LTD

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2005, I served a copy of the Answer of China Southern Airlines Co. LTD. To the Amended Complain via electronic filing and first-class mail, postage prepaid, to the following counsel of record:

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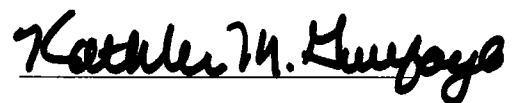
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A handwritten signature in black ink, reading "Kathleen M. Guilfoyle". The signature is written in a cursive, flowing style.

Kathleen M. Guilfoyle